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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In The Matter of )  
 )  
Advanced Television Systems ) MM Docket No. 87-268  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

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COMMENTS OF APOGEE BROADCASTING CORPORATION

I. Apogee Broadcasting Corporation is a small business corporation which is the owner, operator and licensee of Low Power Television (LPTV) station KBTV-LP, Sacramento, CA. Operating on UHF Channel 25, KBTV serves more than one-million people in the metropolitan area surrounding California's Capitol city. Despite its location in a top-20 market, KBTV is the only station to offer live national sportscasts, and classic movies and TV shows to local viewers without cable. When the local Air Force base was threatened with closure, Channel 25 was the only station to provide complete, prime-time coverage of the public forum on the base's future. In 1997 KBTV will be expanding its coverage of community events.

II. The Commission's Sixth Further Notice of Proposed Rule Making specifically threatens the future of KBTV. The FCC's table of proposed Digital Television (DTV) channels allocates Channel 25 to KSCH-TV, Stockton, CA, whose transmitter is just 30 miles from ours. Not only would we be displaced, but the Commission's proposed core region and recapture of Channels 2-6 and 52-69 makes it virtually certain that we could not find a replacement channel in this area where the signals of the Chico, Sacramento-Stockton and San Francisco television markets overlap.

The undersigned owner of Apogee has invested his life savings of some \$200,000 in this station on the Commission's assurance in its LPTV Rulemaking that it could continue to operate--provided it caused no interference. KBTV was carefully engineered to avoid interference and has not caused any. However, the Commission's present DTV plan would put us out-of-business--without recourse or compensation. It not only changes the terms of the "secondary status" of LPTV, but appears to violate the protections for small business under the Regulatory Flexibility Act 5 U. S. C. 601 (3). If implemented as proposed, it is likely to lead to prolonged litigation which will be costly to both taxpayers and business, and delay the very DTV service the Commission finds so important.

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III. LPTV has more than met the goals of the Commission when it was established in 1983. As we outlined in our comments on the Fifth FNPRM, it has provided more ownership opportunities for minorities than Full Power television, has provided special interest and unique ethnic programming in major cities, and has provided numerous small communities with their first local news and community programming.

We believe the Commission is being wildly optimistic in Paragraph 66 when it estimates that about "55 to 65 percent of existing LPTV operations" will be able to continue to operate. We believe more than half of such stations are threatened. If they cease to operate, that could eliminate the critical mass needed for specialty programming networks to remain economically viable, thus leading to a further diminution of the programming diversity on LPTV. None of this would serve the "public interest, convenience and necessity" required by the Communications Act of 1932.

Few viewers are yet aware of the reduction in viewing options that the present DTV proposal would cause, and the Commission and Congress may not be ready for their outcry when their favorite local TV channels disappear.

IV. Apogee Broadcasting hereby endorses the technical proposals of the Community Broadcasters Association (CBA).

Specifically:

1. LPTV to Full Power (FP) interference standards should be no more stringent than FP to FP.
2. Co-channel, adjacent-channel the UHF taboo standards need to be revised to reflect current technology.
3. The Commission must be allowed to compel precise frequency control to avoid unnecessary displacements. KBTU uses a zero-offset to avoid this problem, but not all LPTVs do.
4. The FCC should also be able to require filtering to reduce displacement.
5. Only actual station service contours should be protected. Many FP stations are currently protected in areas that they do not actually serve because of terrain shielding.
6. The Commission should consider allowing cross polarization to prevent LP to FP interference.
7. The FCC should promote co-location to prevent adjacent channel interference.
8. The Commission should allow qualifying, existing LPTV stations to upgrade to a primary status.

V. From an LPTV perspective, the Sixth NPRM makes historic progress in the DTV Rulemaking in that it recognizes for the first time the public service provided by LPTV and the devastation the DTV proposal would cause the LPTV industry. However, though the Sixth raises some useful engineering proposals for mitigation, the proposed Table of Allocations again totally ignores the existence of LPTVs and gives no priority to their preservation.

1. As noted above, the Table allocates DTV Channel 25 to KSCH-TV Stockton displacing the undersigned's KBTU-LP in Sacramento. It also allocates DTV Channel 30 to Channel 32, San Francisco, displacing LPTV K30BI, San Francisco. By simply reversing these two DTV channel allocations, the Commission would still provide second DTV channels for the FP stations, while providing about 100 miles separation and terrain shielding for the two existing LPTVs, which would no longer have to be displaced during the DTV transition. Apogee hereby petitions the Commission to make this amendment to the pending Table.

2. This simple solution suggests a new approach to the DTV Table. First, it should be rerun with the computer considering the existence of LPTVs and trying to protect them from displacement wherever possible. The CBA's consulting engineers stand ready to assist the Commission in designing such a program.

3. Second, FPs and LPTVs should be given a period of time (perhaps 3-6 months) after publication of the revised Table to negotiate and propose to the Commission regional engineering solutions to any problems of coverage limitations or displacement in the revised table. Some of those solutions could include the CBA proposals in IV. above. However, for this to work, the Commission must require FPs to negotiate with LPTVs as suggested in Paragraphs 44-48. The history of this Rulemaking shows that FP industry groups and FP group owners have shown no interest in preserving the diversity of ownership and programming offered by LPTVs. They need an incentive, if not a regulatory mandate to do so.

4. In Paragraph 19, the Commission proposes a core region between Channels 7 and 51 for DTV and the early recovery of Channels 52-69. While we acknowledge that the eventual auctioning of unused spectrum would offer taxpayers a financial benefit, we urge that any such action be deferred until the end of the DTV transition when all FP stations, and as many LPTVs as technically possible, have found new spectrum homes. First, the Commission has acknowledged it will be difficult to accommodate two channels for all FPs in the current TV spectrum and it has yet to accommodate existing LPTVs--especially in urban areas. Second, the American people who already have lost Channels 70-83 have demonstrated no interest in having fewer television channels than they have now.

5. In Paragraph 26, the Commission proposes allocating some recovered TV spectrum as a permanent or temporary home for LPTVs and translators. We believe the FCC's priority should be on protecting LPTV's on their current channels. Forcing an LPTV to change channel (possibly more than once) would provide a huge financial burden on the stations least able to afford it. (See staff's Regulatory Flexibility Analysis under Appendix C.) About 70% of Apogee's capital plant is tied up in our transmitter and directional antenna which are frequency specific. While the transmitter could probably be retuned for another UHF channel for several thousand dollars, a new antenna would cost \$30,000-50,000. The new DTV licensees taking over existing LPTV channels should have to pay for their frequency changes, or pay them for the lost business opportunities in the event no new channel is available under FCC Rules. Alternatively, DTV operators proposing a multi-channel service should have to provide a replacement channel for displaced LPTV operators at a cost comparable to LPTV's operating costs. Only after all FPs are offered a second DTV channel and after as many LPTVs are accommodated as possible, should spectrum recapture and auction be contemplated.

6. In Paragraph 51, the Commission asks what should happen to any channels available during and after the DTV transition. Clearly equity and regulatory fairness requires that LPTV owners forced off-the-air by the transition should be given first priority on any surplus channels before any new applicants are allowed. Second priority should be given to multi-channel DTV operators who agree to allocated one or more of their channels to LPTV operators displaced by the DTV transition. Only then should any remaining channels be made available for application by the public.

7. In Paragraph 72, the Commission seeks comment on whether after DTV allotments, LPTV stations should be given an opportunity to seek "primary" status ahead of new broadcast entrants. We support this concept. LPTVs which agree to meet certain local origination, children's programming and regulatory standards similar to FP stations should be given the benefits of protected "primary" status and any cable "must-carry" rights. In markets, where not all displaced LPTV stations can be accommodated on existing vacant channels, priority should be given to coalitions of operators proposing a multi-channel DTV service which will carry the most displaced stations possible. Such new "primary" stations should be limited solely on their non-interference to other primary services and not to the artificial limit on transmitter output power to which LPTVs are now limited.

8. In Paragraph 67, the Commission continues "to recognize the benefits that low power stations provide to the public" through diversified ownership and programming to both rural and urban areas. However, in 66 the FCC acknowledges that many LPTVs will have to be displaced by DTV, and in 64 that "we must continue LPTV and TV translators secondary status vis-à-vis DTV stations." We disagree. We believe that through a combination of the sensible engineering approaches outlined above and giving displaced stations a priority on any remaining TV spectrum, the Commission holds in its hands the opportunity to preserve the unique LPTV broadcast service it created in 1983. Further, the FCC can use this DTV transition to allow many LPTV stations to upgrade to primary status. We refuse to believe that this Commission wants to become the first in the FCC's nearly seventy-year history to destroy a broadcast service that it created.

VI. WHEREFORE, for the foregoing reasons, this petitioner respectfully requests that the Commission revise the rules and policies proposed in the Sixth Further Notice to incorporate the revisions described above.

Respectfully submitted,  
Apogee Broadcasting Corporation



Robert Suffel  
President

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